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TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

2 VAC 20-40. Rules and Regulations Governing Licensing of Pesticide Businesses by the Department of Agriculture and Consumer Services Operating Under Authority of the Virginia Pesticide Control Act.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Effective Date: October 5, 2006.

PART I. DEFINITIONS.

2 VAC 20-40-10. Definition of terms.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. An asterisk following a definition denotes that the definition has been taken from Article 1 (§ 3.1-249.27 et seq.) of Chapter 14.1 of Title 3.1 of the Code of Virginia.

"Act" means the Virginia Pesticide Control Act.

"Board" means the Pesticide Control Board.*

"Bulk pesticide" means any registered pesticide concentrate which is transported or held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or greater than 100 pounds net dry weight.

"Certification" or "certified" means the recognition granted by the Pesticide Control Board to an applicator upon satisfactory completion of board approved requirements.*

"Commercial applicator" means any person who has completed the requirements for certification as determined by the board to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.*

"Commissioner" means the Commissioner of Agriculture and Consumer Services.*

"Department" means the Department of Agriculture and Consumer Services.*

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means The Federal Insecticide, Fungicide, and Rodenticide Act as amended, and herein incorporated by reference.

"Licensed" or "licensee" means those businesses which, upon meeting the requirements established by the Pesticide Control Board, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.*

"Limited quantities" means purchases, at cost, for resale, of less than \$50,000 annually per outlet of products containing nonrestricted use pesticide active ingredients.

"Pest management consultant" means any person, who may or may not apply pesticides himself, who has obtained a business license in accordance with the requirements listed below, and who is authorized by this chapter to provide technical advice, supervision or aid, or recommendations for pesticide application commercially in Virginia.

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses or bacteria, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest, (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (iii) any substance which is intended to become an active ingredient in any substance defined in clauses (i) and (ii) of this definition.*

"Pesticide business" means any person engaged in the business of distributing, applying, or recommending the use of a product; or storing, selling, or offering for sale pesticides for distribution directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations that produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) of this definition are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.*

"Pesticide business location" means any fixed location of a pesticide business with either a telephone that is used to transact business or give advice, or where products, supplies or business mail is delivered. Residences of service technicians who are employed by a licensed pesticide business are exempt, if no business solicitation is conducted from that location.

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.*

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the United States Environmental Protection Agency.*

PART II. PROCEDURES FOR OBTAINING A BUSINESS LICENSE.

2 VAC 20-40-20. General requirements for all pesticide businesses; exemptions.

A. Any person or business operating in Virginia, which, in exchange for compensation, sells, stores, distributes, mixes, applies or recommends for use pesticides, shall obtain a valid pesticide business license pursuant to this chapter. Each pesticide business location shall be licensed.

B. Exempted from the provisions of this chapter are the following:

1. Merchants of limited quantities of nonrestricted use pesticides who sell pesticides primarily intended for limited household use;
2. Federal, state and local governmental agencies;
3. Certified applicators not for hire; including those who use or supervise the use of pesticides as part of their job duties only on property owned or leased by themselves or their employer; and
4. Providers of janitorial, cleaning or sanitizing services if the providers use no pesticides other than sanitizers, disinfectants and germicides.

C. Application for a pesticide business license is made by submitting to the department (i) a completed application form and (ii) a check or money order in the amount of the annual business license fee established by the board.

D. Each applicant for a pesticide business license, or an employee designated by the applicant, shall demonstrate to the commissioner his knowledge of (i) pesticide laws and regulations; (ii) potential hazards of pesticides to man and the environment; and (iii) safe distribution, use, and disposal of pesticides by passing a written examination prior to his being issued a business license. If the applicant is already certified as a commercial applicator, he shall be exempt from the initial examination requirement.

E. All licensed pesticide businesses shall maintain written records pertaining to their operations, as required in this chapter.

F. All licensed pesticide business locations or outlets which sell restricted use pesticides, or distribute restricted use pesticides for purposes of selling, shall have a certified commercial applicator present who shall bear immediate responsibility for the correct and safe operation of the location or outlet. Each business shall notify the department of the name of the commercial applicator assigned to each location or outlet, and shall also notify the department within three business days of any change in the applicator assignments during the license period.

G. All licensed pesticide businesses that store, repack and distribute bulk pesticides shall meet the requirements established by the board for the storage, repackaging and distribution of bulk pesticides.

H. All pesticide business licenses shall expire at midnight on March 31 of each year. Licensees shall renew their licenses annually by application to the department and payment of the annual fee on or before close of business March 31. The department shall charge a 20% penalty in addition to the regular fee for renewal applications filed after March 31.

2 VAC 20-40-30. Business licensing requirements for commercial applicators.

Any person mixing or applying any pesticide commercially in Virginia shall either (i) obtain a valid pesticide business license pursuant to 2 VAC 20-40-20 A, or (ii) be employed by a currently licensed pesticide business. The business license and fee shall not be considered a substitute for the commercial applicator certification and fee. Possession of a business license does not authorize the licensee to apply restricted use pesticides, nor does it allow a reduction of the fee necessary for an applicator's certification.

2 VAC 20-40-40. Business licensing requirements for pest management consultants.

A. Any person or business which recommends any pesticide for use commercially in Virginia shall obtain a valid pesticide business license issued pursuant to 2 VAC 20-40-20 A. This provision shall exclude sales personnel of a licensed pesticide business, company training, technical and sales representatives certified in the demonstration pesticide applicator category, and governmental employees while performing in an official capacity.

B. The specialty categories for a pest management consultant shall conform to the commercial applicator categories established pursuant to the Act. The pest management consultant shall meet the requirements of the specific category or subcategory in which he is making recommendations for pesticide use prior to being issued a business license.

PART III. RECORDKEEPING

2 VAC 20-40-50. General recordkeeping requirements.

A. Records covered in this chapter shall, upon written request, be made available for inspection by the commissioner or his designee during normal business hours. Records not readily available shall be submitted to the commissioner within 72 hours if so requested in writing.

B. Persons possessing records covered in this part (2 VAC 20-40-50 et seq.) shall fully comply with the requirements contained in the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136 F) and regulations pursuant thereto.

C. Pesticide businesses shall maintain for a period of two years all records required by this chapter.

2 VAC 20-40-60. Recordkeeping of restricted use pesticide sales by pesticide businesses.

A. Pesticide businesses that sell restricted use pesticides shall maintain a record of each restricted use pesticide sold. Each sales record shall contain the following:

1. Name, address, certified applicator number or business license number, and certificate or license expiration date of the person to whom the restricted use pesticide was sold or delivered;
2. Date of sale;
3. Brand or common product name;
4. EPA registration number; and
5. Quantity of pesticide sold or delivered.

B. The restricted use pesticide sales recordkeeping requirement may be satisfied by invoices, if (i) such invoices are kept separate from the licensee's other sales records, and (ii) the invoices contain the above information.

2 VAC 20-40-65. Recordkeeping of pesticide applications by licensed pesticide businesses.

Licensed pesticide businesses shall maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

1. Name, address, and telephone number of customer and address or location, if different, of site of application;
2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;
3. Day, month and year of application;
4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand name or common product name;
7. EPA registration number;
8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and
9. Type of application equipment used.

2 VAC 20-40-70. Recordkeeping of pesticide applications by pesticide businesses.

Pesticide businesses shall maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

1. Name, address, and telephone number of customer and address or location, if different, of site of application;

2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;
3. Day, month and year of application;
4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand name or common product name;
7. EPA registration number;
8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and
9. Type of application equipment used.

PART IV.
EVIDENCE OF FINANCIAL RESPONSIBILITY.

2 VAC 20-40-80. Evidence of financial responsibility required of a licensed pesticide business.

A. Prior to being issued a pesticide business license, a business shall furnish evidence of financial responsibility, consisting of a liability insurance policy from a person authorized to do business in Virginia, or a certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticide by the applicant.

B. The liability insurance policy shall meet the following conditions:

1. The certificate of insurance shall include the name of the insurance company, policy number, insurance amount, type of coverage afforded, any exclusions relating to damage arising from the use of pesticides, and expiration date of the policy. The policy shall cover liability arising out of the handling, storage, application, use or misuse, or disposal of any pesticide; it shall also cover liability relating to completed operations.
2. The policy shall be in an amount specified in subsection C of this section.
3. The licensee shall forward a current certificate of insurance to the board at each insurance renewal date.

C. The amount of financial responsibility as provided for in this section shall be a minimum of \$100,000 for property damage, and \$100,000 for personal injury or death of one person; and \$300,000 per occurrence. The licensee shall maintain at least the minimum coverage at all times during the license period, and shall notify the board at least 10 days prior to any reduction at the request of the licensee or cancellation of such financial responsibility by the insurer. If the deductible of an applicant for a business license is greater than \$1,000, evidence of financial responsibility shall be furnished to the board to satisfy the difference between the applicant's deductible and the \$1,000 deductible. This evidence may consist of a financial statement.

PART V.
REVOCATION, SUSPENSION OR DENIAL OF BUSINESS LICENSES.

2 VAC 20-40-90. Revocation of a business license.

In addition to the violative acts listed under § 3.1-249.63 B of the Act, the following are grounds for revocation by the board of a business license:

1. Failure to (i) submit records to the commissioner upon written request; or (ii) to permit any person designated by the commissioner to have access to, and to copy such records of business transactions as may be essential to carrying out the purposes of the Act.
2. Operation of a pesticide business location or outlet without a certified commercial applicator assigned to the location or outlet as required by this chapter.
3. Interference with the commissioner or his duly authorized agents in carrying out the duties imposed by the Act.
4. Conduct by a licensee, as determined during the course of a hearing, which has or might have resulted at any time in substantial danger to, or in unreasonable adverse effects on, the public health, safety, or the environment.
5. Failure of a licensee to notify the department of any change in financial responsibility as specified in 2 VAC 20-40-80 C.
6. Multiple violations of the Act or regulations pursuant thereto within a three-year period.

2 VAC 20-40-100. Summary suspension by commissioner.

A. The commissioner may suspend the pesticide business license of any person, without a hearing, simultaneously with the institution of proceedings for a hearing, if he finds there is a substantial danger to the public health, safety, or the environment that warrants this action. Situations that may warrant suspension include, but are not limited to, the following:

1. Operating a pesticide business or pesticide business outlet without a certified commercial applicator on site as required by this chapter, when absence of the applicator presents a substantial danger to the public health, safety, or the environment, as determined by the commissioner.
2. Refusal by a pesticide business, after receipt of a written request, to permit the commissioner or his agent access to and to copy records of business transactions, when such refusal presents a substantial danger to the public health, safety, or the environment, as determined by the commissioner.

B. The commissioner shall institute proceedings for a hearing pursuant to § 2.2-4020 of the Code of Virginia simultaneously with any summary suspension. Subject to any provision of procedure or chapter of the board for the processing of violations not inconsistent with this chapter:

1. The hearing shall be held within 60 days after the suspension; and
2. The hearing officer conducting the hearing shall have the authority to consider and address all matters relating to the summary suspension, including but not limited to the withdrawing, sustaining, or modifying thereof.

The commissioner or a conference officer appointed by the commissioner shall offer the person whose license has been summarily suspended (hereinafter "the respondent") an opportunity to appear in an informal conference, authorized by § 2.2-4019 of the Code of Virginia, to be held within three days after the summary suspension. The informal conference may consider, subject to any provision of the board for the processing of violations, all matters relating to the summary suspension, including but not limited to the withdrawal, sustaining, or modifying thereof. Nothing in this section authorizing consideration of matters by an informal conference shall be construed to deny a respondent's right to a hearing.

C. No person may operate a pesticide business at any time when his license is suspended.

2 VAC 20-40-110. Denial of license by the commissioner.

A. The commissioner shall deny a business license to any applicant who does not submit all the information required on the license application form, or who does not fully comply with all requirements for licensing set forth in this chapter.

B. The commissioner may, after notice to a pesticide business applicant and after opportunity for hearing, deny a pesticide business license to an applicant who has violated the pesticide law or regulations of any state or competent authority so as to evidence a disregard for proper and safe pesticide use; or if his license has been denied, suspended, nullified, withdrawn, revoked, or otherwise terminated by any state or other competent authority.

C. Any applicant for a pesticide business license shall not engage in the activity for which he is requesting a license until the commissioner shall have issued it.

2 VAC 20-40-120. (Repealed.)

FORMS

Application for Virginia Pesticide Business License, Form VDACS-07209 (rev. 11/05).

Certificate of Insurance, Form VDACS-07214 (rev. 4/96).

Request to take the Virginia Pesticide Business License Examination (rev. 8/06).